

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On October 29, 2014 appellant, then a 64-year-old retired senior aerospace engineer, filed an occupational disease claim (Form CA-2) alleging that workplace exposure to mercury, lead, cadmium, arsenic, and aluminum caused multiple medical conditions including diabetes, multiple sclerosis, and Parkinson's disease. The employing establishment indicated that appellant had been on leave for long periods of time from the summer of 2012 and had retired on June 3, 2013.

By development letter dated December 8, 2014, OWCP advised appellant that the evidence of record was insufficient to establish her claim. It requested that she provide additional factual and medical evidence. OWCP provided appellant a questionnaire for her completion and afforded her 30 days to submit additional evidence.

After initial development, OWCP denied the claim on March 12, 2015. On April 9, 2015 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

Results of March 2, 2015 laboratory testing ordered by Dr. L. Terry Chappell, an attending Board-certified family physician, found that appellant had positive results to aluminum, antimony, cadmium, cesium, gadolinium, lead, nickel, and uranium. In an October 7, 2015 report, Dr. Chappell advised that he first saw appellant on March 2, 2015 and had reviewed her medical records since 1983. He noted that she had multiple gynecological problems, infections, pneumonias, respiratory problems, frequent fractures and falls, digestive problems, and profound fatigue. Dr. Chappell opined that appellant's immune system had been compromised. He noted that appellant was exposed to toxic materials at work and advised that her health problems stemmed from this exposure.

OWCP continued to receive a series of medical reports pertaining to diverse medical conditions which did not explain the cause of any diagnosed conditions.

During the hearing, held on November 3, 2015, appellant testified regarding her employment exposure to toxic materials. The hearing representative explained the type of medical evidence needed if exposure were accepted.

By decision dated January 27, 2016, an OWCP hearing representative found that the case was not in posture for decision and remanded the case for OWCP to obtain additional evidence from the employing establishment regarding appellant's chemical exposures.

In letters dated February 9 and April 5, 2016, OWCP asked the employing establishment to furnish information regarding appellant's exposure to specific toxic elements. The employing establishment did not respond.

By decision dated May 23, 2016, OWCP found that, based on medical testing on March 2, 2015 and the absence of a response from the employing establishment, appellant had experienced exposure to aluminum, antimony, arsenic, barium, beryllium, bismuth, cadmium, cesium 133, gadolinium, lead, mercury, nickel, thallium, tin, tungsten, and uranium at the employing establishment. It found she had not established exposure to palladium, platinum, tellurium, and thorium. Following review of the medical evidence submitted, OWCP found that appellant had not established a diagnosed medical condition causally related to the accepted work exposures to toxic heavy metals.

On December 28, 2016 appellant, through counsel, requested reconsideration and submitted a December 21, 2016 report from Dr. Ernest P. Chiodo, Board-certified in internal and occupational medicine.

In the December 21, 2016 report, Dr. Chiodo described appellant's employment and exposure history and advised that she gradually developed a significant neurological disease during the course of her employment. He noted his review of some medical records and advised that appellant's symptoms included difficulty with balance and walking, difficulty with concentration and impaired short-term memory, which continued to the present and rendered her unable to work. Dr. Chiodo indicated that appellant had been evaluated medically for Parkinson's disease, thyroid and Lyme disease, diabetes, and multiple sclerosis, but was found not to suffer from any of these ailments. He noted his review of a medical publication, *Neuropathology of Heavy Metal Intoxication*,³ regarding exposure to heavy metal causing neuropathy. Dr. Chiodo indicated that appellant had a long-term exposure to rocket propellants and the combustion products of rocket propellants that included hydrazine and heavy metals, opining that these were well known to cause the neurological manifestations from which she is suffering. He noted that, despite extensive medical evaluations, no alternative explanation for her neurological disease had been found and, therefore, a differential diagnosis of etiology pointed only to her federal employment as the cause for her neurological impairment. Dr. Chiodo diagnosed neuropathy and encephalopathy. He concluded, within a reasonable degree of medical and scientific certainty, that appellant's neurological disease was caused by her long-term exposure to rocket propellants and the combustion products of rocket propellants including hydrazine and heavy metals during the course of her federal employment, which caused her to be permanently disabled.

By merit decision dated March 24, 2017, OWCP denied modification of its May 23, 2016 decision. It noted that, as it did not appear that Dr. Chiodo examined appellant and because he did not specifically reference any of her prior medical records, his opinion that she suffered from employment-related neuropathy and encephalopathy was of diminished probative value.

Appellant, through counsel, requested reconsideration on August 3, 2017. In a report dated April 11, 2017, Dr. Chiodo opined that appellant's occupational exposure caused neuropathy and encephalopathy, noting that despite extensive work-up, no alternative explanation had been found. He indicated that he had physically examined appellant, and related that he observed that she had difficulty with ambulation, required a cane to walk, and had difficulty processing and answering

³ *Neuropathology of Heavy Metal Intoxication*, 26 Environmental Health Perspectives, 117-120 (1978).

questions. Dr. Chiodo reiterated that, upon his review of records and his observation of appellant, she had neuropathy and encephalopathy caused by occupational exposure.

By merit decision dated March 7, 2018, OWCP found that appellant had not submitted medical evidence substantiating that her exposure to heavy metals in the course of her federal employment caused her diagnosed medical conditions. It noted that, although Dr. Chiodo indicated that he observed appellant ambulate and respond to questions, he did not provide complete physical examination findings. OWCP further noted that, although Dr. Chiodo again indicated that he reviewed medical records, he did not reference any specific report. It concluded that the evidence present was not of sufficient probative value to modify its prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that he or she sustained an injury in the performance of duty, and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.⁵

In an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

⁴ *Supra* note 2.

⁵ *M.S.*, Docket No. 17-0980 (issued June 19, 2018).

⁶ *E.M.*, Docket No. 18-0275 (issued June 8, 2018).

⁷ *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

⁸ *E.V.*, Docket No. 18-0106 (issued April 5, 2018).

⁹ *A.M.*, *supra* note 7; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

In his October 7, 2015 report, Dr. Chappell maintained that toxic exposure at work caused appellant's health problems. However, he merely indicated that she had a history of multiple gynecological problems, multiple infections, pneumonias, respiratory problems, frequent fractures and falls, digestive problems, and profound fatigue, and generally opined that her immune system had obviously been compromised. Medical evidence must be of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰ A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹¹ Dr. Chappell's report is of insufficient rationale to establish causal relationship.¹²

Dr. Chiodo diagnosed neuropathy and encephalopathy. The Board, however, finds that he did not provide sufficient explanation regarding whether the conditions he diagnosed were caused or aggravated by appellant's work exposure. The Board has held that, in assessing medical evidence, the weight of a physician's opinion is determined by the opportunity for and thoroughness of the examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale used to explain the conclusions reached.¹³

Dr. Chiodo indicated that appellant was exposed to rocket propellants and the combustion products of rocket propellants at work on a long-term basis. He opined that a differential diagnosis of etiology pointed only to her federal employment as the cause for her neurological impairment and concluded that these caused her to be permanently disabled from work. Although he reported that appellant had an extensive work-up which ruled out other causes of her condition, Dr. Chiodo did not reference specific examinations, tests, or studies that led to the formation of his opinion. Moreover, his only description of examination findings was that he observed that she had difficulty with ambulation and required a cane to walk and had difficulty processing and answering questions. Dr. Chiodo did not provide specific neurological or neuropsychological test findings. Thus, contrary to counsel's assertion on appeal, Dr. Chiodo's reports are insufficient to meet appellant's burden of proof.¹⁴ To establish causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified as causing the claimed condition and, taking these factors into consideration as well as findings upon examination, explains how the employment factors caused or aggravated the diagnosed conditions

¹⁰ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010).

¹¹ See *W.S.*, Docket No. 17-1769 (issued July 26, 2018); *Roma A. Mortenson-Kindschi*, 57 ECAB 148 (2006).

¹² *A.M.*, *supra* note 7.

¹³ *T.P.*, Docket No. 17-1468 (issued August 6, 2018)

¹⁴ *E.M.*, *supra* note 6.

and presents medical rationale in support of his or her opinion.¹⁵ Dr. Chiodo did not provide the necessary medical rationale to establish causal relationship between the accepted employment factors and the diagnosed medical conditions.

As appellant has not submitted rationalized medical evidence to establish an occupational disease causally related to the accepted factors of her federal employment, she has failed to meet her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ *J.M.*, 58 ECAB 303 (2007).